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Cc: [Lichtenberg, David](#); [Solari, Michele](#)
Subject: FW: Activity in Case 2:21-cv-06310-GRB-AYS Williams v. LKQ Corporation et al Motion for Pre Motion Conference
Date: Tuesday, July 25, 2023 12:11:21 PM
Attachments: [\[29\] Letter Motion Requesting Pre-Motion Conference - Responding to Plaintiff's Opposition to Pre-Motion Letter and Seeking Conference 7.25.23.pdf](#)

Please see attached filed with the Court today. Hard copy to follow via FedEx.



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Eastern District of New York

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Case Name: Williams v. LKQ Corporation et al

Case Number: [2:21-cv-06310-GRB-AYS](#)

Filer: Michael Ketrick

LKQ Corporation
Shahrooz Moreh

Document Number: [29](#)

Docket Text:

Letter MOTION for pre motion conference re [26] Letter MOTION for pre motion conference re [25] Amended Complaint *Requesting to File a Motion to Dismiss the Amended Complaint and Seeking a Pre-Motion Conference*, [28] Second MOTION to Amend/Correct/Supplement [25] Amended Complaint *Responding to Plaintiff's Opposition to Defendant's 5/1/23 Pre-Motion Letter (26) and Seeking a Pre-Motion Conference* by Michael Ketrick, LKQ Corporation, Shahrooz Moreh. (Lichtenberg, David)

2:21-cv-06310-GRB-AYS Notice has been electronically mailed to:

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July 25, 2023

VIA ECF

Hon. Anne Y. Shields, U.S.M.J.
100 Federal Plaza, P.O. Box 840
Central Islip, NY 11722-9014

Re: *Williams v. LKQ Corporation et al.*
Case No. 21-cv-6310 (GRB) (AYS)
Pre-Motion Letter

Dear Judge Shields:

This firm represents Defendants LKQ Corporation (“LKQ”), Shahrooz Moreh (“Moreh”), and Michael Ketrick (“Ketrick”) (collectively, “Defendants”) in the above-referenced matter. In accordance with Your Honor’s Individual Practice Rules, Defendants submit this response to Plaintiff’s opposition to Defendant’s May 1, 2023, pre-motion letter outlining their request to file a motion to dismiss Plaintiff Everard Williams’ (“Plaintiff”) Amended Complaint and seeking a pre-motion conference. Defendants have recounted the below procedural history for the Court’s benefit, below.

Plaintiff is *pro se*. On June 7, 2021, Plaintiff filed a Complaint in the Supreme Court of New York, County of Nassau, (the “State Court Complaint”) against LKQ, Keystone Automotive Industries, Inc. (“Keystone”)¹, and Moreh, alleging violations of the New York Minimum Wage Act, New York Labor Law, New York Wage Theft Prevention Act, New York disability benefits law, New York Worker Adjustment and Retraining Notification (“N.Y. WARN”), and common law defamation. Defendants filed a motion to dismiss the State Court Complaint. In response, Plaintiff voluntarily withdrew his State Court Complaint. Plaintiff also filed a substantially similar

¹ Keystone, a business that distributes automotive paint and related consumable, is a subsidiary of LKQ Corporation, a leading distributor and marketer of alternative automotive parts, equipment, and accessories.

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charge of discrimination with the New York Division of Human Rights (NYDHR). The NYDHR dismissed the charge and issued a “no probable cause” determination.

On November 15, 2021, Plaintiff filed a Complaint (the “Complaint”) with this Court against Defendants LKQ, Moreh, and Ketrack, alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (“Title VII”); the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 to 634 (the “ADEA”); the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12112 to 12117 (the “ADA”); and Fair Labor Standards Act (“FLSA”). The Complaint did not assert claims under N.Y. WARN, the New York disability benefits law, or for Defamation. Defendants filed a partial motion to dismiss Plaintiff’s FLSA claims and claims against the individual defendants. The Court granted the motion, with prejudice, on February 1, 2023.

On March 27, 2023, Plaintiff filed a Motion to amend his Complaint, which was granted on April 24, 2023. The Amended Complaint (the “Amended Complaint”), filed on April 28, 2023, included claims that do not appear in the original Complaint, and that Defendants moved to dismiss in State Court. Moreover, Plaintiff continued to allege claims that are ripe for dismissal.

On May 1, 2023, Defendants submitted a pre-letter motion as notice of their intention to move to partially dismiss Plaintiff’s Amended Complaint, because, pursuant to *Fed. R. Civ. P.* 12(b)(6), the N.Y. WARN claim, New York disability benefits law claim, and the Defamation claim are all deficient. Defendants advised that Plaintiff’s disability benefits claim fails because he has provided no factual allegations to support it. Next, Plaintiff’s N.Y. WARN claim is incurably deficient because Defendant LKQ did not lay off the required number of employees to trigger a notice requirement for termination or recall. *See* N.Y. Labor Law § 921.1(i). Finally, Plaintiff’s defamation claim fails because it lacks specificity. Namely, Plaintiff fails to include the alleged defamatory remarks, the purported speakers, or the supposed audience in his Amended Complaint. *See* N.Y. C.P.L.R. § 3016(a); *Bobal v. Rensselaer Polytechnic Inst.*, 916 F.2d 759, 763 (2d Cir. 1990). As such, this claim should be dismissed.

On July 20, 2023, Plaintiff submitted a letter in opposition to Defendant’s request for a pre-motion conference. Please accept this succinct response. Plaintiff’s letter simply refers to statutory citations but provides no substantive factual support. It appears that all of Plaintiff’s “arguments” are the same as those proffered in his State Court complaint, which he voluntarily withdrew, and NYDHR complaint, which received an issuance of “no probable cause.” Should Plaintiff be permitted to file his proposed Amended Complaint, Defendants intend to articulate the same arguments as they previously made in the State Court motion to dismiss. Filing yet another motion addressing Plaintiff’s deficient claims would cause undue burden and prejudice. As a result, it is respectfully submitted that a pre-motion conference is warranted.

Specifically, as to the NYWARN claim, Plaintiff’s “allegation” that the threshold number of employees were impacted is just wrong. Only sixteen employees were impacted, which does not trigger NYWARN notice requirements (which requires at least twenty-five).

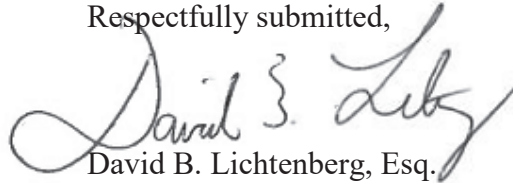
The proposed defamation claim is deficient as well, because (1) the alleged defamatory statements are true; (2) Plaintiff has not met the requisite standard of “false and misleading information,” because the statements are true; (3) Plaintiff cannot establish special damages as a

result of the statements; and (4) the statements are privileged because the business is entitled to tell its customers and partners that Plaintiff did not work there anymore.

Finally, Plaintiff's disability claim is deficient because (1) he did not timely file his claim for benefits; (2) this claim should have been properly filed before the workers' compensation board – not the Court; and (3) Plaintiff's disability claim stems from a work-related injury, which is not a proper basis for claiming disability.

As noted, we respectfully request a pre-motion conference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David B. Lichtenberg". The signature is fluid and cursive, with a large initial "D" and "L".

David B. Lichtenberg, Esq.
For FISHER & PHILLIPS LLP

cc: Pro se Everard Williams (via electronic and regular mail)

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